

REMARKS

Claims 1-20 and 22-25 are currently pending in this application. Claim 21 has been canceled. Claims 1-20 and 22-24 have been amended. Applicant has carefully reviewed the Office Action and respectfully request reconsideration of the claims in view of the remarks presented below.

Specification Objections

Paragraph [0001] was objected to for not including the serial number of the referenced patent application. Paragraph [0001] has been amended to include the appropriate serial number.

Claim Objections

Claim 21 was objected to as being a duplicate of claim 2. Claim 21 has been canceled.

Double Patenting

Claims 1-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending application serial no. 10/782,684. Applicant prefers to hold this matter in abeyance pending notification of allowable subject matter in both the present application and copending application serial no. 10/782,684.

Claim Rejections Under 35 U.S.C. §102

Claims 1-6, 9, 10, 12-14 and 21-25 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,908,392 (Wilson).

Wilson discloses a system that requires medical practitioner input and evaluation to set triggers for transferring portions of data from a continuously recorded-to temporary memory to a long-term memory. In the Office Action, the actions of the medical practitioner were interpreted to correspond to particular elements and features

of Applicant's claims, including those related to adaptive modification of recording triggers or parameters. In response, Applicant has, in some cases, amended claims to clarify the absence of medical practitioner input and evaluation. In other cases, Applicant simply traverses the interpretation and application of Wilson.

Regarding independent claim 1, it now recites an implantable medical device comprising memory; and a processor operative to: selectively record diagnostic data in memory upon the detection of predetermined recording triggers indicative of circumstances wherein diagnostic data is to be recorded; and adaptively modify the recording triggers so as to reduce the likelihood of any unnecessary recording of diagnostic data.

Applicant submits that Wilson fails to disclose an implantable medical device having a processor that adaptively modifies recording triggers. Accordingly, Applicant requests reconsideration of the §102 rejections of claim 1 and dependent claims 2-20 and 22.

Regarding independent claim 23, it now recites a method performed by an implantable medical device, the method comprising evaluating the likelihood that circumstances will arise wherein diagnostic medical data is to be recorded; controlling the recording of diagnostic data based upon such an evaluation; determining whether the circumstances wherein diagnostic medical data is to be recorded actually occurred; and adaptively modifying parameters employed to evaluate the likelihood of such circumstances so as to reduce the risk of unnecessarily recording of diagnostic data.

Applicant submits that Wilson fails to disclose an implantable medical device that itself performs a method including adaptively modifying parameters employed to evaluate the likelihood of such circumstances so as to reduce the risk of unnecessarily recording of diagnostic data. Accordingly, Applicant requests reconsideration of the §102 rejections of claim 23.

Regarding independent claim 24, it now recites an implantable medical device comprising a memory operative to record diagnostic medical data; and an adaptive-

based diagnostic controller operative to selectively record diagnostic data in the memory upon the detection of predetermined recording triggers and further operative to adaptively modifying the recording triggers so as to reduce the likelihood of any unnecessary recording of diagnostic data.

Applicant submits that Wilson fails to disclose an implantable medical device with an adaptive-based diagnostic controller operative in accordance with the features recited in claim 24. Accordingly, Applicant requests reconsideration of the §102 rejections of claim 24.

Regarding claim 25, it is written to invoke 35 U.S.C. §112, ¶ 6. As such, its elements are to be interpreted in light of corresponding structure described in the specification and equivalents thereof. Claim 25 recites a system for adaptively controlling the recording of diagnostic data within an implantable medical device comprising means for storing data; means for selectively recording diagnostic data within the means for storing upon the detection of predetermined recording triggers indicative of circumstances wherein diagnostic data is to be recorded; and means for adaptively modifying the recording triggers so as to reduce the likelihood of any unnecessary recording of diagnostic data. Structure described in the specification corresponding to, for example, means for adaptively modifying the recording triggers includes a diagnostic data controller. See specification, paragraphs [0048] – [0052]. The specification does not describe or contemplate human activity, e.g., medical practitioner activity, as part of the means for adaptively modifying recording triggers.

In view of the foregoing, Applicant submits that Wilson fails to disclose means for adaptively modifying the recording triggers so as to reduce the likelihood of any unnecessary recording of diagnostic data. Accordingly, Applicant requests reconsideration of the §102 rejections of claim 25.

Claim Rejections Under 35 U.S.C. §103

Claims 7, 8 and 15-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wilson. Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Wilson in view of official notice.

In view of the foregoing analysis of independent claim 1 in view of each of Wilson, Applicant believes that the rejections under §103 are moot as dependent claims 7, 8 and 15-20 depend from allowable independent base claim 1.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-20 and 22-25 is believed to be in order.

Respectfully submitted,

Date

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